

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Livingston Smith—Referee

PARTIES TO DISPUTE:

UNITED TRANSPORT SERVICE EMPLOYEES

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: The Southern Railway System abused its discretion and applied excessive discipline, when they suspended from service for one (1) trip, Messrs., Jas. Black, William Thomas, John Atwater, N. E. Simmons, H. C. Calloway, Newton Buck and W. E. Padgett, Jr., for alleged, failure to protect your assignment on time enroute on Train 38, Diner 501, March 17, 1954.

That each employe named above, have the suspension removed from his record, and be compensated for any loss he sustained from the discipline levied by the Carrier.

OPINION OF BOARD: This is a discipline matter. Request is made in behalf of seven named individuals that the penalties imposed be rescinded.

All seven employes were dining car cooks or waiters, being members of a dining car crew running between Atlanta, Georgia, and New York, New York. While enroute between these points it is customary for dining car crews, when relieved, to retire to a dormitory car. This car is cut out of the train in Washington, D. C.

On March 16, 1954, this crew had an assigned relief time of 11:00 P. M. with a required reporting time of 4:00 A. M. the following morning, that is March 17, 1954. The record further indicates that the crew was expected to be prepared to serve the breakfast meal at about 4:55 A. M.

On the dates in question, due to oversleeping, this crew was still on the dormitory car when it was cut out at Washington; however, when they did awaken, they secured the assistance of the stationmaster at Washington, D. C., to secure transportation for them on another train to Baltimore, Maryland, when their train (No. 38) was detained some 13 minutes awaiting their arrival at approximately 6:00 A. M.

After investigation, forfeiture of pay for one hour and 45 minutes, together with suspension for one trip was imposed on each crew member. Redress is here sought to the extent of removal of such suspension from the record and compensation for all time lost.

The Organization took the position that it has been the custom for dining car employes to be awakened by some member of the train crew; that

no rule of the effective Agreement places the sole responsibility of reporting on time upon the employe, but rather that the possibility of reporting late is recognized by Rule 45, which provides for payment only for time actually worked.

The respondent countered with the assertion that the Claimants were approximately two hours late in reporting for dining car duty; that it was necessary to hold up Claimants' train about 15 minutes; that each of the Claimants was late for reporting for part of his assignment; and that this Board should not place its stamp of approval on a clear dereliction of duty by interfering with the penalty imposed.

The fact that because Claimants here had in the past been awakened by others, it cannot be properly held that they were not at all times personally responsible to avoid oversleeping and to report on time. That each employe failed to report on time was admitted at the investigation. Having admitted that they were late, each of the Claimants made himself a proper subject for discipline.

Provided the investigation is fair and impartial and the penalty imposed not excessive, this Board has often refused to substitute its judgment for that of the Carrier.

The investigation here was fair and impartial. The penalty imposed is neither excessive nor unreasonable and should not be disturbed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the effective Agreement.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.